

## MEDICAL JURISPRUDENCE†

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### California Workmen's Compensation Act As It Affects Physicians and Surgeons

This is the second of a series of articles commencing in the September, 1944, issue of *CALIFORNIA AND WESTERN MEDICINE* (page 177), with reference to the above subject and with particular emphasis being placed upon the fees of physicians and surgeons in industrial injury cases.

In October of 1942, by direction of the Council of the California Medical Association, there was filed with the Industrial Accident Commission an application for the adoption of a new, complete and adequate medical and surgical fee schedule to serve as a guide for the Commission in making awards in industrial accident cases and to supplant the existing inadequate and outmoded schedule originally adopted in 1913 and readopted with but a small increase in 1920. The fee schedule in current use lists only 87 procedures and operations while the proposed new schedule presented by the California Medical Association lists 543 medical and surgical procedures and operations, which experience has shown are encountered in industrial cases. In its new fee schedule, the Association sought to revise the compensation fixed for the 87 items set out in the old schedule and to establish for the first time reasonable compensation for 450 new items.

On February 15, 1943, the Industrial Accident Commission held a public hearing upon the proposed schedule at which the C.M.A., private insurance companies, the State Compensation Fund and self-insurers were represented. Upon completion of the hearing, the new schedule was taken under advisement. After giving the matter its consideration, the Commission raised as a major objection to the adoption of the new schedule the fact that in its opinion the Commission would not have the necessary authority to enforce compliance with the schedule by employers, private insurance companies and physicians throughout the State. Mr. Paul Scharrenberg, Chairman of the Commission, cited Section 5304 of the *California Labor Code* as the primary obstacle to adequate control by the Commission of fees paid to physicians in industrial injury cases. This section reads as follows:

"The Commission has jurisdiction over any controversy relating to or arising out of sections 4600-05 inclusive (Sections relating to medical care) *unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made by the persons or institutions rendering such treatment and the employer or insurer.*" (Italics supplied.)

The legal effect of this section is to take away from the Commission jurisdiction to determine

medical fees, in any case, where there has been an express agreement made between the physician and the employer or insurance company covering fees to be paid. The Industrial Accident Commission cited instances where physicians agreed to make rebates to the insurance companies with the Commission having no power to prohibit such a practice. It was suggested by the Commission that this would have a detrimental effect on the State Compensation Insurance Fund because, whereas the state operated company would comply with the proposed fee schedule if it should be adopted, the private companies would be free to force rebates from physicians and thus achieve an advantage.

It was the opinion of the Council of the California Medical Association, that in spite of *Labor Code*, Section 5304, most private insurance carriers would abide by the new schedule and that the Association could control agreements between physicians and insurance companies by disciplinary action against any member of the Association who might enter into an agreement with an insurance company to accept fees less than those set in the new fee schedule or to rebate on established fees. Notwithstanding its opinion in this regard, the C.M.A. wished to meet the objection raised by the Industrial Accident Commission and to this end procured the amendment of Assembly Bill 292, and the introduction at the 1943 session of the California Legislature of Senate Bill 1097. These bills proposed to add a new section to the *Labor Code* which would, in effect, prevent agreements between physicians, hospitals and workmen's compensation insurance carriers which had for their purpose the payment by insurance companies and acceptance by physicians of compensation less than that prescribed in the new fee schedule, should it be approved and adopted by the Industrial Accident Commission. Sanctions were provided in the proposed amendment to the law which would make it readily enforceable against both physicians and insurance companies who might attempt to deviate from the established fee schedule. Unfortunately, the bill met with such determined opposition on the part of some insurance companies that efforts to bring about its passage were unavailing.

It is true that under the existing law the Industrial Accident Commission is not given jurisdiction over controversies involving the fees for medical services in industrial injury cases where there is a written contract establishing the fee between the employer or his insurance company and the physician. Amendments to the law along the lines of Senate Bill 1097 are extremely desirable, but notwithstanding this defect in the law, urged as the bar to adoption of the proposed new fee schedule by the Industrial Accident Commission, the C.M.A. felt a revision of the schedule was none the less imperative. Accordingly, the C.M.A. diligently pursued its efforts to bring about approval of the new fee schedule. Some measure of success was achieved by the Association when, on July 18, of this year, the Industrial

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† Editor's Note.—This department of *CALIFORNIA AND WESTERN MEDICINE*, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

## LETTERS †

**Concerning Social Security Representatives That Physicians Must Register If They Give Emergency Professional Services for Colleagues:**

(COPY)

September 25, 1944.

Room 1331, 450 Sutter Street  
San Francisco 8, CaliforniaPaul C. Barton, M.D.,  
Executive Officer,  
Procurement and Assignment Service,  
Washington 25, D. C.

Dear Doctor Barton:

Recently a great deal of disturbance and interference with the practice of medicine in the case of several busy practitioners has been brought about by the agents of the United States Treasury Department, Bureau of Internal Revenue. This sounds pretty ominous, I know, but it is also serious, and to me, inexcusable.

A Miss Anne Dunn, whose chief I believe is Mr. Albert Sellinger of the Bureau of Internal Revenue, 100 McAllister Street, San Francisco, California, has recently been interviewing certain doctors, and I believe it is contemplated that they are going to canvass the whole field, with a view to determining whether these doctors are paying any other physician for taking care of his patients during his vacation, or during an emergency when he is unavailable through any reason whatsoever. These agents state that if a doctor compensates a confrere for visiting one of his patients in the middle of the night, or when he is on vacation, the doctor who makes the visit must register under Social Security, must pay a certain amount of money for this fee, and that the doctor for whom he has performed this service and who has reimbursed him must also pay a certain sum to Social Security. I have given you this simple case, which is an actual case, in order to show how far certain departments in the Government are reducing certain laws to absurdity. It means that at this time, of all times, when every physician is practically killing himself to take care of the civilian population, that for the sake of carrying out some theory to the 'nth degree, the physician is now being asked to go through a great deal of time-consuming work in order to satisfy some crackpot regulation which was never meant to cover these cases and is only cutting down and interfering with the medical care of the civilian population. The probable actual number of dollars and cents is so little as to be meaningless. Furthermore, practically every physician who makes an emergency call for another physician or takes care of certain patients for a physician who is sick or even on vacation to keep from being sick, has his own practice, is self-employed and does not wish to be registered under Social Security or take the necessary time and carry the necessary bookkeeping, and make out the forms necessary to carry on such an absurd program.

The above does not apply to physicians who are hiring assistant M.D.'s on a salary basis for full or part time work. Such cases very conceivably come under the intent of the Social Security regulations and there is no objection to this. The absurdity lies in carrying this to such an intolerable degree. I do not know whether this procedure here in San Francisco is based on a national direction or whether it is possibly the idea of some local sub-department head, but I believe that it is to the inter-

est of the Procurement and Assignment Service and to the medical profession to determine this.

I do not know of any profession that is taking the beating because of the number of members in the military forces, that the medical profession is. It has become absolutely necessary for doctors to spell and relieve one another in order to, in any way, maintain their own health and efficiency during this emergency. Many of us are taking care of the practices of other physicians while they are in service, and reimbursing them for a percentage of the income received from their patients. This is a pure partnership basis. Similarly, many physicians are taking night calls or week-end calls on a rotational basis while their confreres are absent. Remuneration for this is also on a partnership basis in the individual case. If now, in addition to doing their utmost to cover this emergency situation, the Treasury Department is going to throw a lot of extra work on the medical profession in order to dot an *i* in an isolated sentence, to comply with someone's interpretation of an otherwise good law, we, in this country, are certainly in for a bad time.

It is my request and suggestion that the Central Board in Washington immediately investigate the source and authority and reasons for the above procedure on the part of the local, if not national, department of Internal Revenue, with a view to obtaining some means of relief for the medical profession. If persisted in, this is going to, and as a matter of fact is, interfering with the efforts of Procurement and Assignment Service and the efforts of the medical profession which is doing such a noble job during these trying times. Already I am having doctors call me up saying that they will not make any more calls for other physicians if they have to go through all this red tape, because they are performing an act which is helping out a physician, which they are in no way obligated to do. Although I have not been approached personally, I imagine that I will be in the near future. I can only say this, that several confreres have realized that I was giving my time to War Manpower at a terrific financial and physical sacrifice and they have gladly and patriotically released me of night calls during this emergency and during the absence of my brother who is in the Navy. In a great many cases I have reimbursed these physicians for covering me in these emergencies, paying them either all or part of the fee which I have collected from the patient who was glad to have this physician in my absence. If I have to now go back through my books for the last two years and ferret the exact sums of money which I have paid on individual cases, and have to fill out Social Security forms for these various physicians, and if these various physicians are forced to take out Social Security numbers and go through similar red tape of reporting these fees, I will certainly have to not only resign from Procurement and Assignment Service, so that I may work for Social Security, but I will also immediately give up any attempt to cover my patients through making available to them the services of other physicians.

I would appreciate your reactions and the reactions of the Central Board regarding the above, and I would also request that you investigate and inform me as to what the future holds regarding it.

With kindest regards, I remain,

Sincerely yours,

HAROLD A. FLETCHER, M.D.,

*California State Chairman for Physicians  
Procurement and Assignment Service.*

(Medical Jurisprudence. Concluded from p. 227)

Accident Commission approved a surcharge of 15 per cent over the existing fee schedule effective August 1, 1944. This order of the Industrial Accident Commission will be discussed more at length in the next issue.

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